

Kevin Bratcher - 9/30/2021  
CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

KEVIN BRATCHER, )  
                    )  
Plaintiff,        )  
                    )  
v.                 ) Case No. 3:20-cv-02056-SB  
                    )  
POLK COUNTY; CITY OF SALEM;     )  
DEPUTY MICHAEL H. SMITH, in     )  
his individual capacity; and    )  
DOES 1-4 in their individual    )  
capacity,            )  
                    )  
Defendants.        )  
                    )

DEPOSITION OF KEVIN BRATCHER  
Taken in Behalf of the Defendants

Thursday, September 30, 2021

Reported by:

D. Iwalani Carr, RPR, CSR

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1 BE IT REMEMBERED THAT, pursuant to Federal  
2 Rules of Civil Procedure, the deposition of KEVIN  
3 BRATCHER was taken before D. Iwalani Carr, RPR, CSR, a  
4 professional shorthand reporter certified by the State  
5 of Oregon, that pursuant to ORS 44.320 said reporter is  
6 empowered to administer oaths to witnesses, that the  
7 above-named witness was placed under oath on Thursday,  
8 September 30, 2021, commencing at the hour of 9:18 a.m.,  
9 in the conference room of the Law Offices of Lafky &  
10 Lafky, in the City of Salem, County of Marion, State of  
11 Oregon.

12 --o0o--  
13

14 APPEARANCES:  
15

16 For the Plaintiff:  
17 Lafky & Lafky  
By: Marcus I. Vejar  
429 Court Street NE  
18 Salem, OR 97301

19 For the County Defendants:  
20 Law Offices of Montoya Hisel and Associates  
By: Kenneth S. Montoya  
901 Capitol Street NE  
21 Salem, OR 97301

22 For the City Defendants:  
23 City of Salem Legal Department  
By: Jennifer Gaddis  
555 Liberty St. SE, Room 205  
24 Salem, OR 97301  
25

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1 Q. Hit anything?

2 A. Just the flooring.

3 Q. What kind of cell phone did you have at the  
4 time?

5 A. An iPhone.

10:36

6 Q. Any damage done do it?

7 A. No, sir.

8 Q. Do you have one of those fancy cases that --

9 A. I have a case on it.

10 Q. -- impacts --

10:36

11 A. Yes, sir.

12 Q. How soon after Salem PD gets there until  
13 you're taken outside?

14 A. Within five minutes.

15 Q. And did your Ring doorbell capture you being  
16 taken outside?

10:36

17 A. I believe so, sir.

18 Q. And you've given that to your attorney for him  
19 to produce for us?

20 A. Yes, sir.

10:36

21 Q. Describe how you folks left your residence.

22 Who was in front?

23 A. It was Deputy Smith on my right side, and one  
24 of the Salem police officers on the left side.

25 Q. And you indicated the Salem officer grabbed

10:36

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1 your biceps?

2 A. Yes, sir.

3 Q. How did Deputy Smith have you?

4 A. I believe he just had me on my arm, too.

5 Q. Now, the way you described, you kind of put 10:37  
6 your left hand over your right biceps and it looked  
7 fairly loose.

8 Is that accurate?

9 A. Yeah. He didn't have -- he didn't have force  
10 on. 10:37

11 Q. Would you agree that it was an escort-type  
12 hold?

13 A. Yes, sir.

14 Q. And was his position even with you or slightly  
15 behind you? 10:37

16 A. Little bit behind me, I believe.

17 Q. And the Salem officer?

18 A. Beside me.

19 Q. Even with you?

20 A. I believe so. 10:37

21 Q. Where was the other Salem officer?

22 A. I can't remember if he walked out first or was  
23 behind us.

24 Q. And you had, like, a screen door; right?

25 A. No, sir. 10:37

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1 asks how things are going with it.

2 Q. So it continues to bother you.

3 A. Yes.

4 Q. All right, sir. Let's take a look at  
5 paragraph 16, please, of your complaint, page 5. 11:02

6 Are you good? Do you need a break?

7 A. No, I'm good.

8 Q. All right, sir. Please read along with me to  
9 make sure I read this accurately.

10 "Plaintiff was handcuffed and detained in 11:02

11 Deputy Smith's patrol car, only later being released and  
12 cited at the order of an on-duty sergeant. While being

13 brought to Deputy Smith's vehicle, Does 1 and 2 had  
14 helped escort plaintiff, at which point one of the

15 officers had gripped plaintiff's left biceps so firmly 11:03

16 he had visible marks on his biceps. Despite plaintiff

17 being injured by Deputy Smith and had difficulty

18 walking, Does 1 and 2 forcibly walked plaintiff a

19 distance of over a football field to detain him in

20 Deputy Smith's vehicle. Plaintiff's foot was badly

21 injured due to Deputy Smith, and the actions of Does 1

22 and 2 only further contributed to plaintiff's pain and

23 suffering. The altercation between plaintiff and Deputy

24 Smith resulted in extensive property damage to the

25 plaintiff's home by kicking in the door and injury to 11:03

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1 plaintiff through the use of force to effectuate the  
2 arrest. The district attorney's office for Polk County  
3 did not pursue any other charges brought against  
4 plaintiff."

5 Did I read that accurately, sir? 11:04

6 A. Yes, sir.

7 Q. All right. Here, it indicates you had  
8 difficulty walking, but a few minutes ago you told us  
9 you didn't notice anything to your foot until a half  
10 hour later. 11:04

11 A. It didn't hurt, but I -- I had difficulty  
12 walking, the shoes that I was wearing.

13 Q. Why?

14 A. I don't know.

15 Q. You didn't have any difficulty walking when 11:04  
16 you went out to throw the paper or come back in, did  
17 you?

18 A. No.

19 Q. So why did you have difficulty walking out?

20 A. I would assume because my foot was bothering 11:04  
21 me, but I didn't notice it.

22 Q. Does that make sense to you?

23 A. Yeah.

24 Q. It does?

25 A. Mm-hm. 11:04

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1 remote and toss it?

2 A. I would say yes, ma'am.

3 Q. And you stated it was thrown on the floor?

4 A. Yes, ma'am.

5 Q. Approximately how far away from you was it  
6 thrown? 11:55

7 A. To you to me, about three feet.

8 Q. It wasn't thrown at you?

9 A. No, ma'am.

10 Q. Did it hit anything on the way down? 11:55

11 A. Just the floor.

12 Q. And you don't recall them saying anything to  
13 you prior to throwing the cell phone.

14 A. No.

15 Q. Was there any damage done to the cell phone or  
16 the remote? 11:55

17 A. No, ma'am.

18 Q. I'm going to show you a video. And I  
19 apologize for the numbering of my exhibits. They're a  
20 bit out of order because we had some duplicative ones.  
21 So this is going to be COS Exhibit 104. 11:55

22 I've had my sound muted so I didn't disturb,  
23 so bear with me.

24 (COS Exhibit 104  
25 video played.) 11:56

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1 A. No, ma'am, other than probably telling them  
2 that I needed to shut my stimulator off.

3 Q. So I don't want you to guess. So I just want  
4 to know if you actually heard specifically what you were  
5 telling them. 11:58

6 A. It's too garbled.

7 Q. Okay. I'm going to keep playing it and I  
8 might stop it and ask you some more questions. Okay?

9 (Video played.)

10 Okay. Now, I've paused it at 1:04 of 11:58  
11 Exhibit 104, and can you identify the law enforcement  
12 agency that has a hold of your right elbow?

13 A. That's Deputy Smith on my right side.

14 Q. And then on your left elbow, I know you can't  
15 identify a name, but is that Salem PD over on the left? 11:58

16 A. Yes, ma'am.

17 Q. Okay. And it appears that Salem PD is  
18 trailing slightly behind you in the video.

19 Is that correct?

20 A. It looks that way, yes, ma'am. 11:58

21 Q. And probably not easy for three grown men to  
22 fit through a doorway at once?

23 A. No. It's not a very wide space right there.

24 Q. Okay.

25 A. Once out in the driveway is whenever everybody 11:59

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1 A. No, I do not.

2 Q. Was there anything that had happened  
3 immediately prior to the incident that would have  
4 caused --

5 A. No. 12:06

6 Q. Let me finish my question. Sorry.

7 A. Okay.

8 Q. It's okay. It's just for her benefit.

9 -- that would have caused marks on your left  
10 arm? 12:07

11 A. No.

12 Q. Regarding the foot injury that you said you  
13 started to feel approximately 30 minutes after the  
14 incident, did you ever communicate that your foot was  
15 injured to Salem police officers? 12:07

16 A. I didn't -- I didn't feel it at the time.

17 Q. So you did not communicate that to --

18 A. No.

19 Q. And just to follow up, did you ever  
20 communicate to Deputy Smith that you had a foot injury? 12:07

21 A. No.

22 Q. Are there any other injuries besides the  
23 injuries to your left arm that you are alleging Salem  
24 Police Department officers caused?

25 A. No. 12:07

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1       2 then grabbed the cell phone and control device from  
2 plaintiff's hand and threw them across the room without  
3 any provocation from plaintiff."

4                  Is that a correct reading of that sentence?

5       A. Yes, ma'am.

12:17

6       Q. Okay. So as I understand your testimony  
7 today, they took the cell phone and charger and threw  
8 them on the floor.

9                  Is that correct?

10      A. Mm-hm.

12:17

11     Q. Okay. So a little different than here, but  
12 they didn't throw it across the room at anything;  
13 correct?

14     A. It was kind of like a toss to the floor.

15     Q. Okay. Okay. Thank you.

12:17

16      A. And that's what you could hear on the video,  
17 me telling them I needed my stimulator remote to work on  
18 my stimulator.

19      Q. And Deputy Smith ultimately picked it up and  
20 gave it back to you; right?

12:17

21      A. Yeah.

22      Q. Okay. Great.

23                  And in paragraph 16, I'm looking at the third  
24 sentence: "Despite plaintiff having been injured by  
25 Deputy Smith and had difficulty walking, Does 1 and 2

12:17

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1 deputy's car. I was complying with everything that was  
2 going on.

3 Q. You've already testified, however, that they  
4 did not have any sort of extensive conversations with  
5 Deputy Smith when they arrived; correct? 12:22

6 A. Yes, ma'am. Not that I recall.

7 Q. Okay. They asked why you were cuffed in the  
8 front, but that was it; correct?

9 A. Yes, ma'am.

10 Q. So how do you know that they were aware that  
11 you didn't need to be guided to his vehicle in that  
12 manner? 12:22

13 A. Because I was complying with everything that  
14 was being said, other than I was trying to get my remote  
15 back for my stimulator to shut it off. 12:22

16 Q. Okay.

17 Is it possible that those marks could have  
18 been caused when they were trying to fit through a door  
19 that was not very wide?

20 A. I don't know, ma'am. 12:22

21 Q. Is it possible?

22 A. Could be. Maybe.

23 Q. But certainly you don't remember a particular  
24 moment where the Salem officer --

25 A. No. 12:23

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1 CERTIFICATE

2

3

4 I, D. Iwalani Carr, a certified Shorthand  
5 Reporter for Oregon, hereby certify that, pursuant to  
6 Federal Rules of Civil Procedure, KEVIN BRATCHER  
7 personally appeared before me at the time and place set  
8 forth in the caption hereof; that at said time and place  
9 I reported in Stenotype all testimony adduced and other  
10 oral proceedings had in the foregoing matter; that  
11 thereafter my notes were reduced to typewriting under my  
12 direction, and that the foregoing transcript, pages 1 to  
13 145, both inclusive, constitutes a full, true and  
14 accurate record of all such testimony adduced and oral  
15 proceedings had, and of the whole thereof.

16

17

18 Witness my hand and CSR seal at Silverton,  
19 Oregon, this 14th day of October, 2021.

20

21

22

23

24

25

  
D. Iwalani Carr  
Certified Shorthand Reporter  
Certificate No. 90-0220  
License expires 9/30/22

